

U.S. Department of Justice  
P.O. Box 7611  
Washington DC 20044-7611  
Telephone: (202) 514-5474  
Facsimile: (202) 514-0097  
Email: [Josh.Van.Eaton@usdoj.gov](mailto:Josh.Van.Eaton@usdoj.gov)

1 WHEREAS, upon their own initiative and at the Court's direction with the assistance of  
 2 the Settlement Master consistent with Pretrial Order No. 6 (Dkt. No. 973), the United States on  
 3 behalf of the Environmental Protection Agency, Volkswagen AG, Audi AG, Volkswagen Group  
 4 of America, Inc., Volkswagen Group of America Chattanooga Operations LLC, Porsche AG and  
 5 Porsche Cars North America, Inc. (together, "VW Defendants"), the United States Federal Trade  
 6 Commission ("FTC"), the California Air Resources Board and the California Office of the  
 7 Attorney General (together, "California"), and the Plaintiffs' Steering Committee ("PSC")  
 8 (collectively, "Parties") have been discussing and will continue to discuss pre-trial resolution of  
 9 certain claims related to the VW Defendants' 3.0 liter diesel vehicles;

10 WHEREAS, the Parties wish to maintain the confidentiality of those discussions and any  
 11 settlement-related documents related to those discussions, as well as any further discussions  
 12 regarding the resolution of these and other claims;

13 WHEREAS, the Parties recognize that certain settlement-related documents or  
 14 information may need to be shared among certain representatives of the Parties;

15 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among  
 16 the Parties:

17 1. Order on Confidentiality. Pursuant to the Court's inherent jurisdiction and  
 18 Federal Rule of Evidence 408, every recipient of this Order shall treat all agreements on  
 19 settlement terms or agreements in principle between and among the Parties, including any  
 20 appendices thereto, and all drafts of all term sheets, appendices, release agreements, consent  
 21 decrees, and communications regarding partial resolution of certain claims related to the VW  
 22 Defendants' 3.0 liter diesel vehicles (including the substance of any discussions and any  
 23 documents prepared in connection therewith) (collectively, "Settlement Documents and  
 24 Communications") as strictly confidential.

25 **Bi-Lateral Exchange of Settlement Documents and Communications**

26 2. United States/California Settlement Documents and Communications. Counsel  
 27 for the United States, California, and the VW Defendants may share Settlement Documents and  
 28

1 Communications, whether draft or final, concerning settlement discussions among the United  
2 States, California, and the VW Defendants with any individual employed by or retained on  
3 behalf of the United States, California, or the VW Defendants, respectively, if that individual has  
4 a need to know the information to further resolution of these matters or if such information is  
5 otherwise required to perform their official duties, provided that Settlement Documents and  
6 Communications concerning discussions between the FTC and the VW Defendants, or  
7 discussions between the PSC and the VW Defendants, are not disseminated to individuals other  
8 than those listed on Exhibit 1.

9 3. FTC Settlement Documents and Communications. Counsel for the FTC and the  
10 VW Defendants may share Settlement Documents and Communications, whether draft or final,  
11 concerning settlement discussions among the FTC and the VW Defendants with any individual  
12 employed by or retained on behalf of the FTC or the VW Defendants, respectively, if that  
13 individual has a need to know the information to further resolution of these matters or if such  
14 information is otherwise required to perform their official duties, provided that Settlement  
15 Documents and Communications concerning discussions among the United States, California  
16 and the VW Defendants, or discussions between the PSC and the VW Defendants, are not  
17 disseminated to individuals other than those listed on Exhibit 1.

18 4. PSC Settlement Documents and Communications. Counsel for the PSC and the  
19 VW Defendants may share Settlement Documents and Communications, whether draft or final,  
20 concerning settlement discussions among the PSC and the VW Defendants with any individual  
21 employed by or retained on behalf of the PSC or the VW Defendants, respectively, if that  
22 individual has a need to know the information to further resolution of these matters or if such  
23 information is otherwise required to perform their official duties, provided that Settlement  
24 Documents and Communications concerning discussions among the United States, California  
25 and the VW Defendants, or discussions between the FTC and the VW Defendants, are not  
26 disseminated to individuals other than those listed on Exhibit 1.

27 5. Parties' Obligation to Maintain Custodian Lists. Government Coordinating  
28 Counsel, Defendants' Liaison Counsel for the Volkswagen Group Defendants, Defendants'

1 Liaison Counsel for the Porsche Defendants, and Plaintiffs' Lead Counsel for the PSC  
 2 ("Coordinating Counsel") shall each keep a list of all individuals within the group for which it  
 3 has coordinating authority who have received any Settlement Documents and Communications,  
 4 which shall include the name, title and affiliation of each individual. Coordinating Counsel shall  
 5 periodically provide updated copies of these lists to the Settlement Master. Except in the event  
 6 of a good-faith claim of violation of this Order, Coordinating Counsel agree not to request copies  
 7 of these lists or determine the identities of the individuals on them.

### 8 **Multi-Lateral Exchange of Settlement Documents and Communications**

9 6. Individuals Authorized to Exchange Documents. Representatives from the United  
 10 States, California, FTC, the VW Defendants, and the PSC who are identified in Exhibit 1 hereto  
 11 are authorized, subject to the terms of this Order, to receive and exchange Settlement Documents  
 12 and Communications between and among the representatives for the other Parties provided those  
 13 individuals are also identified on Exhibit 1.

14 7. Prohibition on Further Exchange of Documents. Except as provided in Paragraph  
 15 6 above, representatives from (1) the United States and California; (2) the FTC; (3) the PSC; and  
 16 (4) the VW Defendants are prohibited from sharing Settlement Documents and Communications  
 17 with individuals not listed on Exhibit 1.

### 18 **Other Provisions**

19 8. Modification of Exhibit 1. Exhibit 1 may be modified to add or remove Party  
 20 representatives only with the express written consent by all Coordinating Counsel. Any such  
 21 modification shall be effective upon delivery of an amended Exhibit 1 to the Settlement Master.

22 9. Freedom of Information Act. Settlement Documents and Communications shall  
 23 be deemed exempt under the Freedom of Information Act, 5 U.S.C. § 552, and any  
 24 corresponding state open records acts absent good cause shown in this proceeding.

25 10. Distribution of this Order. Before Monday, November 7, 2016 at 5:00 pm PT, the  
 26 Parties shall provide a copy of this Order to all persons who have been included in settlement  
 27 discussions. Parties are obligated to provide a copy of this Order to all individuals named on the  
 28 custodian lists provided to the Settlement Master as provided in Paragraph 5 of this Order.

1           11.    Sanctions. Any person found to be in violation of this Order will be subject to  
2 imposition of sanctions.

3           Dated: November 7, 2016

Respectfully submitted,

4                           By: s/ Bethany Engel

5                           Joshua H. Van Eaton

josh.van.eaton@usdoj.gov

6                           Bethany Engel

bethany.engel@usdoj.gov

7                           Environmental Enforcement Section

8                           Environment and Natural Resources Division

UNITED STATES DEPARTMENT OF JUSTICE

9                           P.O. Box 7611

Washington, DC 20044-7611

10                          Telephone: (202) 514-6892

11                          Facsimile: (202) 514-0097

12                           *Coordinating Counsel for the United States*

13          Dated: November 7, 2016

Respectfully submitted,

14                           By: s/ Robert J. Giuffra, Jr.

15                           Robert J. Giuffra, Jr.

giuffrar@sullcrom.com

16                           Sharon L. Nelles

nelles@sullcrom.com

17                           William B. Monahan

monahanw@sullcrom.com

18                           SULLIVAN & CROMWELL LLP

125 Broad Street

19                           New York, New York 10004

Telephone: (212) 558-4000

20                           Facsimile: (212) 558-3588

21                           Laura Kabler Oswell

oswelll@sullcrom.com

22                           SULLIVAN & CROMWELL LLP

1870 Embarcadero Road

23                           Palo Alto, California 94303

Telephone: (650) 461-5600

24                           Facsimile: (650) 461-5700

25                           *Co-Liaison Counsel for the Volkswagen Group*  
26                           *Defendants*

1 Dated: November 7, 2016

Respectfully submitted,

2 By: s/ Jeffrey L. Chase

Jeffrey L. Chase

3 jchase@herzfeld-rubin.com

Michael B. Gallub

4 mgallub@herzfeld-rubin.com

HERZFELD & RUBIN, P.C.

5 125 Broad Street

6 New York, New York 10004

Telephone: (212) 471-8500

7  
8 *Co-Liaison Counsel for the Volkswagen Group*  
*Defendants*

9 Dated: November 7, 2016

Respectfully submitted,

10 By: s/ Cari Dawson

11 Cari Dawson

Alston & Bird

12 1201 West Peachtree Street

Suite 4900

13 Atlanta, Georgia 30309

14 Cari.Dawson@alston.com

404.881.7766

15  
16 *Liaison Counsel for the Porsche Defendants*

17 Dated: November 7, 2016

Respectfully submitted,

18 By: s/ Elizabeth J. Cabraser

Elizabeth J. Cabraser

19 ecabraser@lchb.com

20 LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP

275 Battery Street, 29th Floor

21 San Francisco, CA 94111-3339

22 Telephone: 415.956.1000

Facsimile: 415.956.1008

23 *Plaintiffs' Lead Counsel*

1 Dated: November 7, 2016

Respectfully submitted,

2 By: s/ Jonathan Cohen  
Jonathan Cohen  
3 Federal Trade Commission  
600 Pennsylvania Avenue NW  
4 CC-9528  
Washington, DC 20580  
5 Jcohen2@ftc.gov  
202.326.2551

6 *Counsel for Federal Trade Commission*

7 Dated: November 7, 2016

Respectfully submitted,

8 By: s/ Nicklas A. Akers  
Nicklas A. Akers  
9 Senior Assistant Attorney General  
Nicklas.akers@doj.ca.gov  
10 California Department of Justice  
455 Golden Gate Ave., Suite 11000  
11 San Francisco, CA 94102-7004  
Telephone: 415.703.5505

12 *Attorneys for the People of the State of California*

13  
14  
15  
16 \* \* \*

17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

18  
19 DATED: November 7, 2016.

20   
\_\_\_\_\_  
21 CHARLES R. BREYER  
22 United States District Judge  
23  
24  
25  
26  
27  
28

**ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the other signatories above.

DATED: November 7, 2016 By: s/ Bethany Engel  
Bethany Engel